

Court of Appeals, State of Michigan

ORDER

Jay S Turner v J & J Slavik Inc

Docket No. 289818

LC No. 2007-082782-CZ

E. Thomas Fitzgerald
Presiding Judge

Mark J. Cavanagh

Elizabeth L. Gleicher
Judges

The Court orders that the motion for immediate consideration is GRANTED.

In lieu of granting the application for leave to appeal, the motion for peremptory reversal pursuant to MCR 7.211(C)(4) is GRANTED, the Oakland Circuit Court's November 12, 2008 order denying defendant's motion to dismiss plaintiff's complaint is VACATED and the matter REMANDED to the circuit court to address the merits of defendant's motion. This Court's November 21, 2007 order in docket number 281050 refers only to the plaintiff's unilateral revocation of the common-law arbitration clause and should not be read to state that plaintiff unilaterally revoked the entire settlement agreement or that the remaining portions of the settlement agreement are no longer enforceable. Nor does plaintiff's unilateral revocation of the arbitration provision invalidate the remaining terms of the settlement agreement. *See Stokes v Millen Roofing Co*, 466 Mich 660, 666; 649 NW2d 372 (2002); *Samuel D Begola Services, Inc v Wild Brothers*, 210 Mich App 636, 641; 534 NW2d 217 (1995). On remand the circuit court shall consider the remaining, valid portions of the parties' settlement agreement when deciding defendant's motion to dismiss.

In all other respects the application for leave to appeal is DENIED.

The Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

FEB 17 2009
Date

Sandra Schultz Mengel
Chief Clerk